

REMARKS

Entry of the foregoing and reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested in light of the remarks that follow.

The acknowledgment of applicant's Information Disclosure Statement and return of an initialed copy of applicant's Form PTO-1449 are noted, with appreciation.

Claims 1-50 are now in the application. By the foregoing amendment, Claims 1, 11, 21, 22, 25 and 26 have been amended and new Claims 27-50 have been added.

Claim 1 has been amended to recite that compounds A and B are the only fungicidally active compounds in the composition. Claims 11, 21, 22, 25 and 26 have been amended to recite that compounds A and B are the only fungicidally active compounds applied. Claims 21, 22, 25 and 26 have also been rewritten in independent form. These amendments limit all independent claims to compositions/methods in which A and B are the only fungicidally active compounds. It is clear from the specification as a whole, and especially from the Examples, that, in the preferred compositions and methods of the invention, compounds A and B are the only fungicidally active compounds present/applied. These amendments thus do not introduce new matter into the application.

Claims 27-32 are new dependent claims. These claims depend from Claim 21 and simply add the further limitations of original Claims 16, 17, 14, 18, 19 and 20, respectively. Likewise, new Claims 33-38 depend from Claim 21 and add the further limitations of original Claims 16, 17, 14, 18, 19 and 20, respectively.

New Claims 39-44 depend from Claim 25 and simply add the further limitations of original Claims 16, 17, 14, 18, 23 and 24, respectively. Similarly, new Claims 45-50 depend from Claim 26 and add the further limitations of original Claims 16, 17, 14, 18, 23 and 24, respectively.

It is apparent from the foregoing that none of the amendments set forth above introduce new matter into the claims.

Claims 11-26 have been rejected under 35 U.S.C. § 112, first paragraph, because the specification is considered to be enabling for treating fungi but is considered not to provide reasonable enablement for preventing or curing fungi on plants. Applicant submits that all of the claims now in the application are free of this rejection.

Applicant's original method claims were directed to a process for the curative or preventative control of phytopathogenic fungi in plants. The words "curative or preventative" no longer appear in the claims, obviating the rejection. Nevertheless, it is submitted that the Examiner is taking an overly strict and absolute view of the original language. The original language would be understood by one of ordinary skill to simply mean that application to the plants or their locus to control fungi can occur either before or after infection by the fungi, as is clearly taught by the specification. This is what was meant by the original language, what would be understood by one of ordinary skill in the art from that language and what is still encompassed by the amended language.

Claims 1-20, 23 and 24 have been rejected under 35 U.S.C. § 102(e) as anticipated by Oguri U.S. Patent No. 6,518,304, corresponding to WO 95/15083 published June 8,

1995 and previously cited by applicant. Applicant submits that all of the claims now in the application are free of this rejection.

Present Claim 1 is directed to a fungicidal composition comprising a synergistic fungicidally effective amount of a compound A, which is (i) methyl (E)-methoxyimino[α -(o-tolyloxy)-o-tolyl]acetate (also called BAS490F) or (ii) N-methyl-(E)-methoxyimino[2-(2,5-dimethylphenoxyethyl)phenyl]acetamide (also called SSF-129) and a compound B which is iprodione, the A/B ratio by weight being between 0.02 and 5, compounds A and B being the only fungicidally active compounds in the composition. Claim 11, the broadest method claim, includes the same features.

Oguri discloses mixtures of a compound of his formula (I) with at least one compound (b) selected from a long list of classes of fungicidal compounds. This list comprises thirteen families of fungicide compounds among which thirteen sub-families are cited. Iprodione is cited in that list of compounds as being part of the N-(3,5-dichlorophenyl)imide family. Procymidone and vinclozolin are also cited. Seven compounds of formula (I) are specifically disclosed, among which are included SSF-129 and BAS490F as compounds (Ia) and (Ie).

Formulation Examples 7 to 9 (column 8, lines 36-60) of Oguri disclose different types of formulations for possible mixtures of compounds (Ia), (Ib), (Ic), (Id), (Ie), (If) or (Ig) with procymidone, vinclozolin or iprodione. Nevertheless, these examples remain very general and none of them mentions a specific combination of a compound of formula (Ia) with iprodione or a specific combination of a compound of formula (Ie) with

iprodione. These examples are a generic disclosure of 21 potential mixtures of compounds. They do not specifically disclose mixtures covered by Claim 1 of the present application.

Furthermore, there is nothing in the cited document which would lead one of ordinary skill to select these two specific mixtures from the list of 21 potential mixtures in Examples 7 to 9. This is not a haphazard selection. Indeed, data already submitted herein shows a synergistic effect for the two mixtures covered by instant application. Such a synergistic effect is not mentioned in the Oguri patent. Furthermore, the Oguri patent does not contain any example showing the fungicidal activity of the two compositions covered by applicant's Claim 1. A person of ordinary skill in the art would therefore not have been motivated to select the two specific mixtures claimed by applicant from the 21 potential mixtures broadly disclosed in Examples 7-9.

Thus, the formulation examples of the Oguri patent do not specifically disclose a synergistic mixture of BAS490F with iprodione or a synergistic mixture of SSF-129 with iprodione. Applicant's claims are therefore not anticipated and the rejection of Claims 1-20, 23 and 24 should be withdrawn.

Claims 21, 22, 25 and 26 have not been rejected based on the Oguri patent. The Examiner has apparently recognized that these method claims include features, including particular dosage ranges of compounds being applied to crops or lawns, which are not remotely suggested by Oguri. These claims have now been rewritten in independent form and Claims 27-50 have been added which depend from Claims 21, 22, 25 and 26 and

specify additional features of the invention. All of these claims are believed to be patentable in their present form.

Claims 1-26 have been rejected under 35 U.S.C. § 103 as being unpatentable over Latorse WO 96/03044 and its U.S. counterpart, Latorse U.S. Patent No. 5,906,986. It is respectfully pointed out that the inventor's name is Latorse, not Latrose as indicated in the Official Action and on Form PTO-892. It is believed that the claims now in the application are free of the rejection.

Latorse teaches a fungicidal composition comprising a substituted imidazolin-5-one and at least one additional fungicidal compound selected from a large group of fungicides, one of which can be iprodione and another of which can be BAS490F or SSF-129. It is essential to Latorse's invention, however, that an imidazolin-5-one fungicide, such as (4S)-4-methyl-2-methylthio-4-phenyl-1-phenylamino-2-imidazolin-5-one be one of the fungicides present in her composition and applied in her method. There is no such fungicide encompassed by the instant claims, since all of applicant's claims now specify that his compound A (BAS490F or SSF-229) and his compound B (iprodione) are the only fungicidally active compounds in the composition. Therefore, this rejection cannot be maintained against any of the claims now in this application.

It is also pointed out that Latorse has a PCT publication date of February 8, 1996, subsequent to applicant's priority date. Applicant reserves the right to antedate this reference by submission of an English translation of his priority document. Nevertheless, it is believed that such a submission is unnecessary in light of the current wording of

applicant's claims which clearly exclude the presence of another fungicide such as the one required by Latorse.

In view of the foregoing, it is submitted that the claims now in the application are free of all record rejections. Further, favorable action in the form of a Notice of Allowance is believed to be next in order and is earnestly solicited.

As a final point, it is requested that the Examiner acknowledge the claim for foreign priority and receipt of the certified copy in grandparent Appln. No. 09/051,199, as well as the claim for domestic priority under 35 U.S.C. §§ 120 and/or 121. This application is a continuation of Appln. No. 09/505,874, which is a divisional of Appln. No. 09/051,199, which is the U.S. national phase of PCT/FR96/01532 and claims the priority of FR 95/11951, filed October 5, 1995.

Respectfully submitted,

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